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December 30, 1994

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DEC 30 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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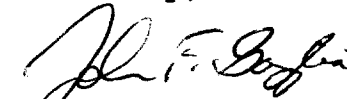
Re: Petition for Rule Making
Amendment of Section 73.202(b),
FM Broadcast Stations
(Cheyenne and Saratoga, Wyoming)

Dear Mr. Caton:

Transmitted herewith on behalf of Rule Communications and KRAE, Inc. is an original and four copies of a Petition for Rule Making seeking the commencement of a proceeding to allot FM Channel 260A to Cheyenne, Wyoming, and to delete the vacant and unapplied-for Channel 260C at Saratoga, Wyoming. Further, in order to eliminate mutual exclusivity between two applications now pending for Channel 285A at Cheyenne, Wyoming, it is requested that the Commission order the amendment of the application of Rule Communications to specify Channel 260A in lieu of Channel 285A while maintaining cut-off protection for the application. In the event an expression of interest is received by the Commission for an additional Class A channel at Cheyenne, the enclosed petition shows that such a channel may be allotted.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


John F. Garziglia

Enclosure

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DEC 30 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) RM _____
FM Broadcast Stations)
(Cheyenne and Saratoga, Wyoming))

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Rule Communications^{1/}, by its attorney, and KRAE, Inc.^{2/}, by its president, pursuant to Section 1.401 of the Commission's rules, hereby seeks the institution of rule making proceeding to amend Section 73.202(b) of the Commission's rules, the FM Table of Allotments, to: add Channel 260A to Cheyenne, Wyoming^{3/}; delete the vacant and unapplied-for Channel 260C at Saratoga, Wyoming^{4/} (to allow for the allotment of Channel 260A at Cheyenne, Wyoming); and order the amendment of the application of

1/ Rule Communications is an applicant for Channel 285A at Cheyenne, Wyoming (FCC File No. BPH-930923ME), whose application is mutually exclusive with the application of KRAE, Inc.

2/ KRAE, Inc. is an applicant for Channel 285A at Cheyenne, Wyoming (FCC File No. BPH-930924MC) whose application is mutually exclusive with the application of Rule Communications.

3/ The reference coordinates for Channel 260A at Cheyenne, Wyoming are 41° 08' 18" North Latitude, 104° 48' 48" West Longitude. A channel study showing compliance with all applicable spacings is attached as Exhibit No. 1.

4/ In the event that an expression of interest in the vacant but unapplied-for Channel 260C at Saratoga, Wyoming is received on or before the comment date in this proceeding, Channel 277C may be substituted for Channel 260C at Saratoga, Wyoming at the reference coordinates of 41° 30' 12" North Latitude, 106° 53' 50" West Longitude, a site restriction of approximately eight kilometers northwest of Saratoga, Wyoming. A channel study is attached as Exhibit No. 2 showing compliance with all applicable spacing requirements from this reference site.

Rule Communications to specify Channel 260A in lieu of Channel 285A while maintaining cut-off protection for the application. In the event that an expression of interest is received in the course of this proceeding for an additional allotment at Cheyenne, Wyoming, Channel 280A may be allotted to Cheyenne, Wyoming^{5/}, with Channel 267C substituted for Channel 280C at Gering, Nebraska^{6/} (to allow for the allotment of Channel 280A at Cheyenne, Wyoming). The following changes are proposed to the FM Table of Allotments:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cheyenne, Wyoming	250C, 264C1, 285A, 292C3	250C, 260A, 264C1, 280A, ^{7/} 285A, 292C3
Saratoga, Wyoming	260C	--- ^{8/}
[Gering, Nebraska	280C	267C ^{9/} Only if interest expressed]

^{5/} The reference coordinates for Channel 280A at Cheyenne, Wyoming are 41° 08' 18" North Latitude, 104° 48' 48" West Longitude. A channel study showing compliance with all applicable spacing requirements is attached as Exhibit No. 3.

^{6/} A first come-first serve application filed by Tracy Corporation IV is presently pending for Channel 280C1 at Gering, Nebraska (FCC File No. BPH-921001MB). As shown in the channel study attached as Exhibit Nos. 4 and 5, the substitution of Channel 267C at Gering, Nebraska is fully spaced at both the allotment reference point and the transmitter site specified by Tracy Corporation IV.

^{7/} The allotment of Channel 280A to Cheyenne, Wyoming, and the substitution of Channel 267C for Channel 280A at Gering, Nebraska is proposed only in the event that one or more expressions of interest are received in an additional allotment for Cheyenne.

^{8/} As noted above, in the event an expression of interest for the vacant Saratoga channel is received on or prior to the comment date in this proceeding, Channel 277C may be substituted for Channel 260C at Saratoga, Wyoming.

^{9/} See Footnote 7.

In support thereof, the following is submitted:

1. This petition proposes to eliminate the mutual exclusivity between the two cut-off applications for new Class A FM facilities at Cheyenne, Wyoming. By the allotment of Channel 260A to Cheyenne, Wyoming, both applications may be granted. If any additional expressions of interest are filed for an additional channel, Channel 280A may be allotted to Cheyenne, Wyoming.

2. This procedure is consistent with Lander, Wyoming, 46 Fed. Reg. 39605, published August 4, 1981. In Lander, Wyoming, the Commission had before it two pending applications for VHF-TV Channel 4 at Lander, Wyoming. One applicant was seeking a non-commercial educational station on Channel 4, and the other applicant was seeking a commercial station on Channel 4. Funding for the non-commercial educational applicant was conditioned upon the use of Channel 4. The Commission held that the earliest initiation of service by the allotment of another channel would be the best solution in the proceeding. Accordingly, the Commission in Lander Wyoming reserved Channel 4 for non-commercial educational use, allotted Channel 5 and allowed the commercial applicant to retain cut-off protection while amending its application to Channel 5. The Commission held that:

The retention of cut-off protection is warranted here since any other interested commercial applicant already had the opportunity to apply for a Lander station by the recent availability of Channel 4 and none expressed an interest in doing so.

The recent notice of proposed rule making in Albion, Nebraska, DA 94-1374, released December 5, 1994, likewise is consistent with the action requested here. In Albion, Nebraska, it is proposed

to allot a new television channel to Albion and permit a mutually exclusive applicant for another Albion channel to amend its application to the new channel without loss of cut-off protection.

3. A like situation exists in this Channel 285A proceeding at Cheyenne, Wyoming in which two mutually exclusive applicants, Rule Communications and KRAE, Inc., have both applied for the same channel. The window has opened and closed, and any other applicants that may have had an interest in applying for a Class A station at Cheyenne, Wyoming have already had an opportunity to do so. On this basis alone, it is submitted that the allotment of an additional channel to Cheyenne while allowing one of the applicants for Channel 285A to amend its application to specify the new channel while retaining cut-off protection would be fully consistent with the procedure established in Lander, Wyoming, 46 Fed. Reg. 39605, published August 4, 1981. The public interest would be well served by the early initiation of service to Cheyenne from both applicants. There would be a reduction in the burden on the Commission's processing and hearing resources by the elimination of the need for the processing of the mutually exclusive applications and a subsequent hearing.^{10/}

4. In the event that an interest is expressed by any other party in providing additional service to Cheyenne, Wyoming, there

^{10/} A grant of the allotments and relief requested in this joint filing enables the resolution of the mutually exclusive proceeding between the two parties for Channel 285A. Commission precedent generally favors settlements as a way of reducing the time, cost and uncertainty of protracted litigation. See generally RRO General, Inc. (KHJ-TV), 3 FCC Rcd 5057 (1988).

is an additional channel that may be allotted to Cheyenne, Wyoming to accommodate such an interest. The allotment of such an additional channel is in the public interest in the event an expression of interest is filed in this proceeding for such an additional channel. See e.g. Modification of FM and Television Station Licenses, 98 FCC 2d 916, 920 (1984). Making the additional channel available would be fully in accord with the strictures of Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). As the Commission has noted in granting modification of licenses for existing stations to non-mutually exclusive channels, "the opportunity for filing for [an equivalent] channel is the only obligation [the Commission] must fulfill to comply with Ashbacker". See Helena, Montana, 50 RR 2d 70, 71 (1981).

5. In order to allot Channel 260A to Cheyenne, Wyoming, the deletion of the open but unapplied-for Saratoga allotment may be made in accord with current Commission policy. It is well settled that a vacant allotment may be deleted to accommodate a proposed new allotment where there is no current interest in retaining the allotment to be deleted. See e.g. Northport, Alabama and Macon, Mississippi, 8 FCC Rcd 2161 (1993) (vacant allotment deleted to accommodate a proposed new allotment in the absence of expressions of interest or acceptable applications for the vacant allotment); Oakdale and Campti, Louisiana, 7 FCC Rcd 7600 (1992) (vacant allotment deleted to accommodate a proposed new allotment, where interest in the vacant allotment was abandoned). Once the vacant Saratoga, Wyoming Channel 260C allotment is deleted (or alternately, once Channel 277C is

substituted for Channel 260C at Saratoga, Wyoming if an expression of interest is filed), the allotment of Channel 260A may be made to Cheyenne, Wyoming.

6. If one or more expressions of interest are submitted for another additional channel at Cheyenne, Wyoming, the substitution of Channel 267C for Channel 280C at Gering, Nebraska, in order to make a new allotment on Channel 280A is in accord with existing Commission precedent. The Commission has held on numerous occasions that the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of new or expanded service in another community. See, e.g. Salem and Sioux Falls, South Dakota, 5 FCC Rcd 1000 (1990); Marietta, Ohio and Ravenswood, West Virginia, 2 FCC Rcd 4681 (1987); and Albany, New York, 2 FCC Rcd 4300 (1987). Because Tracy Corporation IV is an applicant for Channel 280C1 at Gering, Nebraska at the time this petition is filed, it is not entitled to reimbursement for the channel change. See Columbia and Dothan, Alabama; Graceville, Santa Rosa Beach and Springfield, Florida, 7 FCC Rcd 2112 (1992); Glenenden Beach, Sweet Home and Toledo, Oregon, 4 FCC Rcd 7796 (1989).^{11/}

7. Upon the allotment of Channel 260A to Cheyenne, Wyoming, and a reservation of Channel 260A for the application of Rule Communications with cut-off protection, Rule Communications will

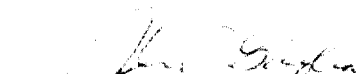
^{11/} Should one or more expressions of interest be filed in another channel at Cheyenne and the Commission determines that it is in the public interest to propose the allotment of Channel 280A to Cheyenne and the substitution of Channel 267C for Channel 280C at Gering, Nebraska, the applicant for Channel 280C1 at Gering, Nebraska should be notified by the party or parties expressing interest in the proposed substitution at Gering.

promptly submit an appropriate amendment specifying Channel 260A for its proposed facility, and when authorized, construct a station promptly on Channel 260A at Cheyenne, Wyoming.

WHEREFORE, for the reasons above, it is respectfully requested that a rule making proceeding be commenced looking toward the allotment of Channel 260A to Cheyenne, Wyoming, and a reservation of Channel 260A for the application of Rule Communications; and the deletion of the vacant and unapplied-for Channel 260C at Saratoga, Wyoming, or in the event an expression of interest for Saratoga, Wyoming is timely submitted, the substitution of Channel 277C for Channel 260C at Saratoga, Wyoming.


Respectfully submitted,

RULE COMMUNICATIONS

By: 
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Its Attorney

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By: 
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President

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WASHINGTON DC 20006

Allotment of Channel 260A to Cheyenne, Wyoming

REFERENCE		CLASS A	DISPLAY DATES
41 08 18 N			DATA 10-28-94
104 48 48 W		Current rules spacings	
----- CHANNEL 260 - 99.9 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
ALOPEN	260C	Saratoga	WY	281.8	170.72	226.0	-55.28 *
ALOPEN	261A	Kimball	NE	82.5	97.28	72.0	25.28
KVUU	260C	Pueblo	CO	180.9	265.61	226.0	39.61

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Substitution of Channel 277C for Channel 260C at Saratoga, Wyoming

REFERENCE		CLASS C	DISPLAY DATES
41 30 12 N			DATA 10-28-94
106 53 50 W		Current rules spacings	
----- CHANNEL 277 -103.3 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KOAQ	278C	Denver	CO	144.5	241.93	241.0	0.93 <
KIQZ	224A	Rawlins	WY	316.4	41.09	29.0	12.09
KRQU	275C	Laramie	WY	100.0	122.61	105.0	17.61
KZYR.C	276C2	Avon	CO	169.6	210.89	188.0	22.89
KQLT	279C	Casper	WY	19.5	146.15	105.0	41.15
KZYR	276A	Avon	CO	169.6	210.89	165.0	45.89

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Allotment of Channel 280A to Cheyenne, Wyoming

REFERENCE		CLASS A	DISPLAY DATES
41 08 18 N			DATA 10-28-94
104 48 48 W		Current rules spacings	
----- CHANNEL 280 -103.9 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
ALOPEN	280C	Gering	NE	51.5	123.09	226.0	-102.91 *
AP280	280C1	Gering	NE	46.6	113.39	200.0	-86.61 *
KKNG.C	283C3	Laramie	WY	287.2	55.42	42.0	13.42
KQKS.C	282C1	Longmont	CO	183.7	115.94	75.0	40.94
KTCL	227C	Fort Collins	CO	206.3	72.99	29.0	43.99

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Move of Channel 280C, Gering, Nebraska Allotment to Channel 267C

REFERENCE	CLASS C	DISPLAY DATES
41 49 42 N		DATA 10-28-94
103 39 36 W	Current rules spacings	
----- CHANNEL 267 -101.3 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KMUSFM	270C2	Burns	WY	226.8	115.50	105.0	10.50
KYCNFM	269A	Wheatland	WY	282.7	109.38	95.0	14.38
KOSI	266C	Denver	CO	209.7	268.36	241.0	27.36
KKAZ	264C1	Cheyenne	WY	234.3	138.53	105.0	33.53
KEZV	266C	Spearfish	SD	357.0	277.92	241.0	36.92

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Move of Channel 280C1 Gering, Nebraska Application to Channel 267C1

REFERENCE		CLASS C1	DISPLAY DATES
41 50 23 N			DATA 10-28-94
103 49 36 W		Current rules spacings	
----- CHANNEL 267 -101.3 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KYCNFM	269A	Wheatland	WY	283.8	95.63	75.0	20.63
KMUSFM	270C2	Burns	WY	221.2	106.72	79.0	27.72
KKAZ	264C1	Cheyenne	WY	230.2	128.28	82.0	46.28